

**Milton Town Council Meeting  
Milton Library, 121 Union Street  
Wednesday, May 22, 2014, 6:30pm**

1. Call to Order – Mayor Jones
2. Moment of Silence
3. Pledge of Allegiance to the Flag
4. Roll Call – Mayor Jones

Vice Mayor Booros	Present
Councilwoman Patterson	Present
Councilman Coté	Present
Councilwoman Parker-Selby	Present
Councilman Collier	Present
Mayor Jones	Present
Councilman West	Absent

5. Public Participation

- Ed Harris: Good evening folks. I just wanted to quickly fill you in on a couple of things. I gave Councilman Collier a couple of grant forms. Do you have them? None. Alright Mayor Jones has them; there is grant money available to cover the additional cost of the fence and I know you have it back on the agenda. I want to thank Councilman Collier and Mayor Jones for talking to me, going over it; it was very gracious of them to spent time with me. Just to give you a quick background. People that don't know, I'll fill you in. The fence is not required, at all. You don't have to do it. I agree with Vice Mayor Booros we do have the grant money. Absolutely, I think we should use it. I think your contractor is going to work with you on this, as far as adjusting the project. You voted on a project. You didn't' vote on specifications, I believe. You had options that you chose and I think, is it true that there were variables that you could change or add on or take away? I'm speaking fast because I only have three minutes. But anyway, from what I understand you're going to be working on the Shipbuilder's project over there. Wouldn't it make sense to hold off on that; take the project; put the money towards Front Street and do this the right way. Okay? The more secure way and then as you finish that project out there, take the grants that are available; there's \$25,000 with one, \$8,000 on the other that you can apply for; apply for a grant to put a fence out at Shipbuilder's Village. That way you're not taking a fence back down and having to work around that project out there. As I said, those of you who weren't here when I was trying to make clarity on this project; this project was not required; absolutely we did apply for it; absolutely, the money is there; but you don't have to use it and fences around water towers now, not only when it first came out they were all securing all their water towers. That was what, 13 years ago? People aren't doing that now. Cape May, I wrote an article for the last meeting, for

those of you that weren't here; are taking their fences down and putting more decorative fence back up. Okay? Because we're not in that high sensitive of security. There has yet to be any cases of water poisoning in this country since 9/11; let's be honest about it. I have a large petition here, which I did not turn over to you and I will give you and there's another petition that's still floating out there from, I believe, in Cannery Village and I think John Pataki has one also. An awful lot of resident's do not want chain link fence; specifically and I'm going to concentrate on Front Street, as you come into the town. I just think it's really not going to be appealing. Councilman Collier had a great idea when I spoke to him and I hope he gets a chance to bring it to your attention; was to push the fence further back, along the building line; rather than having it poured over chain link fencing, as you come into the town. He had some great ideas and we also talked about adjusting up here. I do want to thank you both for meeting with me. It showed me that you were concerned, that you were listening to the resident's and thanks a lot. I hope all you will please, reconsider. As I said, you're not rescinding a vote; basically you're just talking to the contractor and saying we have a concern; we want to just modify it a little bit and I'm sure if he realizes that down the road he's going to get another contract with this project, for more fencing, he'll work with you. Contractor's aren't that rigid. Let's be honest. I really think they'll work with you. And that's it. I hope you'll please consider this. Thank you.

Mayor Jones: And we'll withhold comments, since it's on the agenda. We'll talk about it in full then.

- Jeff Dailey, 211 Gristmill Drive: Thank you for allowing me to speak. I'm going to repeat myself on a couple of things I have to say to you and for the record, this evening. First, on this fencing issue, there was enough talk amongst neighbor's in this Town that I truly feel warranted a member of this Council stepping forward, much earlier and talking directly to those concerned citizens. We shouldn't have to rule in this town by petition. I just don't think that's necessary. We have too good a Mayor and too good a Council for you all to lower yourself to that kind of instruction. This Town has been twice listed in Southern Living, as an up and coming town. I don't ever want us to look at other towns and what they do to allow us to lower the bar. We should be looking at Milton and the products out there, that can make this Town again, listed in Southern Living, in this new economy and let's hope it holds for all our sake. I mentioned revenue loss and revenue expending. The fencing issue should have been brought to the attention of the public in workshop or a public forum. Again, I feel that the citizens are being chastised because they didn't come out in numbers enough, talk loudly enough or long enough or in great enough numbers to get your attention on the esthetic value of that fencing, and this concerns me and for this reason, I think if this Mayor and Council, or any Mayor, or any Council, in any town; I think you should hold yourself to revenue expenses and revenue loss. If you're going to do something that's going to lose this town money, the whole town better know about it and it better be an open forum, public workshop. If you're going to spend money, taxpayer dollars and you can draw the line and you can announce to the public, if we spend \$50,000, you're going to know about it; you're going to be given every opportunity to talk about it and we're not going to rush it through. Those are suggestions that can make this town unparalleled, because guess what? There's in-

fighting, there's rule by petition, there's the malcontents and the discontents over in Millsboro, over in Lewes, over in Rehoboth, but it doesn't have to be that way here. Again, too good a Mayor, too good a Council. Thank you.

- Virginia Weeks: I wanted to come and ask you to use some imagination to fix Front Street. I can't imagine that it would be hundreds of thousands of dollars to make at least the front of it, the picket fence such as next to the theater. Just imagine, you come down Cave Neck Road, it's pretty; the most direct way into town is Front Street; people aren't going to go down to Federal Street and then in; they come in on Front Street; the GPS is going to put them on Front Street and it's going to look like a Japanese Prisoner of War Camp; with the Tidewater fence here, which we're hoping will come down when Tidewater moves off and a black fence, the same thing, across the street. It's going to be like going through a valley of chain link and I really don't think that's what you want to leave as your legacy. I can't reiterate what the people before me have said. I don't know what the disconnect in communication is, but somehow, the townspeople aren't aware of what you're planning on doing with things and there is an uproar; the trees; this; lots of things. Tidewater will be another one. You've got to start communicating with the people in your town. Thank you.
- Barbara Wagner, 409 Federal Street: I just wanted to comment on my impressions from the first Comprehensive Plan meeting led by the Godwin's. I felt like I was at a Sussex County meeting. I didn't feel like I was dreaming beautiful ideas for the little town that I came to live in and then the very first opportunity that there is for another discussion on the Comprehensive Plan, is an invitation to a Sussex County Planner to discuss Elizabethtown. We have only so much time to work on a Comprehensive Plan to make this a beautiful town. If Elizabethtown is part of our town, we don't have a town.

6. Additions or Corrections to the Agenda

Mayor Jones: Do we have any additions or corrections to the agenda?

Councilman Coté: I'd like to make a motion to strike 8.a.

Vice Mayor Booros: Second that motion.

Mayor Jones: Discussion?

Seth Thompson: Just for Council's benefit, I had asked the Mayor to put that item on the agenda because I never like to be in a position where I have information that the Council doesn't necessarily have. I received a call after our last meeting from Blake Thompson who had indicated that they weren't planning at this point in going forward with any of their application; so I recognize it's a small town; the Council's probably already aware of that, but again, that was why I asked the Mayor to put it on the agenda. I just didn't want to be privy to information that wasn't generally known, especially to Council.

Mayor Jones: Is there any further discussion?

Councilman Coté: Well I'm aware that those individuals are meeting tomorrow to discuss going forward, or what it might take to go forward, so I don't think we have a long discussion or even a short discussion, when we don't know what the most current thought is from those individuals or that group, Chestnut Properties.

Seth Thompson: And Councilman I think that's... I certainly take your point well in that if our discussion is going to be premature, then that's fine. Again, my intent for asking that it be on the

agenda, was purely an informational update standpoint.

Councilman Collier: I'd like to see it moved to 9.a., since we've already had discussion with the attorney in respect to potential litigation, that puts that back into play at this time. So I'd like to see it moved down to 9.a. because I'd like to be privy to this information that you have for us, Sir.

Seth Thompson: And to be clear, I think 9.a. really encompasses any advice that I could give you with regard to where we stand on it currently, so I don't think we need to necessarily amend the written agenda; since it's already included in 9.a., but again I understand your point, as well Councilman.

Councilwoman Parker-Selby: It is my understanding that we're looking at 8.a. as prematurely by discussing anything this evening, correct?

Councilman Coté: Yes.

Councilwoman Parker-Selby: And we have a motion, well I'm going to say you go on and call for the vote.

Mayor Jones: My only comment councilwoman on the discussion is that right now, what we have as the most confirmed information, regardless we do not know the variable of what will be discussed tomorrow is that they have balked at going forward. So it will be Council's pleasure to strike it from 8.a. How do we consider what Councilman Collier wants to do by moving it into 9.a.?

Seth Thompson: Well again, 9.a. is on the agenda for that very purpose.

Mayor Jones: Okay.

Councilwoman Parker-Selby: So it won't go into 9.a.?

Seth Thompson: The agenda doesn't need to change with respect to 9.a.; again that's already covered there.

Councilman Collier: I was asking if we were opened to discuss it at that time.

Mayor Jones: So we have a motion to strike 8.a. All those in favor say aye. Opposed. No.

Councilman Collier: No.

Mayor Jones: Motion is carried.

## 7. Agenda Approval

Seth Thompson: I think we need to approve the agenda, as it's been amended.

Mayor Jones: Thank you. Do I have a motion to approve the agenda, as amended?

Councilwoman Patterson: I make a motion to approve the agenda, as amended.

Councilman Coté: Second.

Mayor Jones: Any discussion? All those in favor say aye. Opposed. Motion is carried.

## 8. Old Business – Discussion and possible vote on the following items:

- a. Cannery Village punch list, development standards and subdivision approvals  
**This was removed from the agenda per Council vote.**

- b. Appointment/Reappointment of Commission/Committee members

Mayor Jones: Tonight in front of you I bring Robert Carbone to be reappointed to the Board of Adjustment, to serve another term and Barbara Wagner, pending her ethics form being approved, to be nominated for the Historic Preservation Commission. Barbara lives in the Historic District, which is in keeping with the

proper number that need to be on that board. So I present those names for your consideration and nomination.

Kristy Rogers: I do have Barbara's ethics form at this time, so it's complete.

Vice Mayor Booros: I make a motion that we accept Robert Carbone's reappointment on the Board of Adjustments and Barbara Wagner to fill the vacant position on the Historic Preservation Commission.

Councilwoman Parker-Selby: Second that motion.

Mayor Jones: Any questions, discussion? All those in favor say aye. Opposed. Motion is carried.

- c. Update on Vacant Parcel, known as Orchard Street Extended, tax parcel 2-35 14.00-564.00

Mayor Jones: Who is going to present that? We did receive paperwork this week.

Seth Thompson: We did and Councilman Collier was the one that did the work and certainly I appreciate that. I can walk through the agreement that we've received if the Council has any questions, but it's obviously a very simply agreement for Purchase and Sale; the purchase price is \$10. The Bull's did not provide the specific date as to when they would complete the purchase, which is fine. Frankly, they're not going out and getting financing, that's normally what takes the most amount of time prior to settlement and they didn't specify at this point in time, who their attorney would be in terms of handling the closing. Obviously, my firm can handle the legal fees for really at this point it would be just the Deed preparation, frankly. There isn't any transfer tax because as a municipality, the transaction is exempt. In terms of one important item and certainly the contingency and that is the Bull's need to apply to the town to merge the property in with their current property, so that it will become one parcel; so definitely if anybody has any questions, please stop me. The property is being sold "as is" meaning there aren't going to be any warranties, so the Deed that I would prepare would be a Quit Claim Deed. The risk of loss, basically; frankly there isn't much of a risk of loss on a vacant parcel, but if somehow that fell into the center of the Earth, I think the risk of loss is on the purchaser between now and settlement and the Bull's will need to pay their settlement costs. Again, they could choose to have a Title Search done, if they so choose. They can have Title Insurance, if they so desire. The County and the Town taxes will be prorated, so as of the date of settlement that's when they would take other payments for taxes. Does anyone have any questions?

Councilman Collier: Okay, I can state that they've been informed of all those terms and they said they were understanding. I spoke with Mrs. Bull the same day that she came to Town Hall and signed the \_\_\_\_\_ and they were in the process of getting an attorney; they had ordered a survey and they were waiting for that to be completed and that all the other terms, they were in agreement with and they are willing to move forward.

Seth Thompson: Great. We'll probably end up using the legal description that the surveyor provides in the deed; although we do have a fairly recent one, but it's just helpful if you have a survey done and the surveyor provides the legal

description, it's always good to update it, occasionally the markers get moved, that sort of thing.

Councilman Collier: I told them that they need to get the surveyor involved because of the combining of the two parcels, because a new Deed would have to be written to reflect the new lines.

Seth Thompson: Correct and now that I think about it, I think the Town's process for merging, tends to involve a survey anyway.

Councilman Collier: And they're aware of the process and that they have to see Mr. Davis and all the conditions that they have to meet. So that's where we stand at this point with them.

Mayor Jones: Counselor, I don't want to force anything on the Bull's, but I don't want to see this linger either. Is there a reasonable time that we could ask that this be concluded by? Otherwise, we are taking care of the property, at least that's my understanding. We, right now, are taking care of the property and the taxes go on, so...

Seth Thompson: You're correct. 60 days... It used to be that we would say 60-day contracts, but frequently now with lenders, they typically are 90-day contracts, but again we're not dealing with a lender here; I think 60-days would be a reasonable amount of time to get a survey done.

Mayor Jones: Is anybody else in agreement? I think there does need to be a time. We need to put this to bed.

Councilman Collier: Okay.

Mayor Jones: Will you be notifying them of 60 days, Counselor?

Seth Thompson: I will. So we just need a motion to...

Mayor Jones: Accept?

Seth Thompson: Correct and I guess that could also include authorizing whether it's Kristy, or whether it's you Mayor, to sign the contract.

Councilman Collier: I make a motion to authorize the Mayor to sign this contract. I would ask that Mrs. Rogers notify the Bull's of the 60-day timeframe.

Councilwoman Parker-Selby: Second.

Mayor Jones: Any other discussion? All those in favor say aye. Opposed. Motion is carried.

d. Security Fence Installation Update

Mayor Jones: Mr. Collier requested that the security fence installation update be put on the agenda. I am going to let him speak first, but for any and all who are involved, Mr. Wingo, Mrs. Rogers has knowledge of where the contract is; please feel free to join in the conversation.

Councilman Collier: I had asked for this time, regarding the fence, because there were a lot of what I termed to be misinformation about some of what was going on with it; some of where it was being placed, the types, and so on and so forth. There was an article in the newspaper that wasn't quite correct and some people formed opinions, based on that article. Even tonight I heard things that I found pretty interesting. Just so everybody knows, we met on at least 8 occasions where the fence was on the agenda here and of all those occasions, the only person that



ever came forward, any comments, suggestions and otherwise was Mr. Harris. And we heeded what Mr. Harris said at that time and altered the original plan for the fence; because originally it was going to go along his property line, out to the right-of-way line, down around the hill and enclose the entire hill. He also presented to us his view, as he saw it, in photographs and we further made changes to put in what he presented as his view, the more aesthetically pleasing fence. So that was one of the first things that this Council did and it was based on suggestions. Mr. Harris has brought forth some more suggestions and as much as I'd like to say we can put a screeching halt to this and change it; in the grant acceptance statement there's a thing in here that just worries me to death about making any significant changes to the scope of the contract at this time, because it has to be presented and approved and it says "all requirements, quoted or scope of work must be reviewed and approved by DEMA for compliance with grant guidelines prior to the start of the work". We've already got that approval. It's in place. The window of opportunity to deal with this again and to reapply has basically closed, because we're at the 11<sup>th</sup> hour. As far as the opportunity to come forward and discuss this thing for the public; again eight dates; starting in September of 2013. I listened to the people who brought forward good ideas and things. I really wish that six months ago I'd heard about these additional grants, because it would have given us the opportunity and I realize that some people weren't spurred to action, until they heard the final thing. There was somebody who made the statement; I don't recall who... Mr. Dailey made the statement about contacting and speaking with citizens. Now in the entire time of the... Please Mr. Harris, I know you want to point fingers, but that's okay. In the entire time that this fence has been on the horizon, I've received only one contact from any citizen and again, that was Mr. Harris. I'm available. I'm very visible. I have an email address. I have a telephone number. My personal cell phone number is on my town business card and I take calls and when people request me to talk to them, I meet with them and I don't put it off. I do it hastily because I think that the citizens of the Town and the position I represent, it's my place to respond to them as quickly as I can, when they ask for a response. I spoke, now I'm trying to go back to all these things that were said. I spoke to the Public Works Director about this thing; I've gotten a copy of the grant. The grant was originally applied for to secure all of our Public Works facilities and that's the water tower, the wells, the Maintenance Yard, that's a Public Works facility; so we're not going outside of the grant and I heard that accusation at our last meeting during the public participation section. Mr. Wingo also informed me that there's good reason to fence along the front of the building. If this was a perfect world and in the vision and imagination of those that came before me, we wouldn't even be on Front Street today; but I'm not looking back and I am sorry for making that reference. I apologize to you because I know that it's important that we don't look back, but I think at this point in time, you know, we're hearing you. But I don't know what I can do to change it. I will not ask that it be reconsidered, because we've been called to task about Robert's Rules of Order and seeing as how I'm the guy that started this whole thing with the motion that put it into play, I will

not ask for reconsideration. There are other people at this table that have that ability, if they so choose, but I won't be the one. I can only hope that once it's said and done and I could get into a lot of little details, but I'm not going to sit here and point fingers or complain back to you, because it's not my place to complain to citizens. It's my place to listen and try to do the best that I can. But, at this point, that's what I had to say about this, because I felt responsible for this going forward and I'm going to take the responsibility so, if you need to point a finger, you may point it at me. If you need to damn somebody over this, you may damn me, because I'm the guy that put it all into motion and I did it in what I thought was the best of all worlds, for not only the Town. We can't just arbitrarily ask for a grant and refuse it, because then when the next grant comes along, that's maybe even more important than this one, I don't know that we could get the same consideration and you may shake your head and think that's not so, but I live in the world of turning down grants and I made the mistake of returning one; and now I can't get a nickel out of that agency to further what I need to do, in my personal work. So, that's where I stand on this thing and I just wanted to bring it forward and I'm going to take it on the chin for this one, so if you need somebody, if you want to hang somebody's name on the fence on Front Street, hang mine.

Mayor Jones: What I would like to add is and I had a discussion with Mr. Dailey at the last meeting; actually it was at the Comprehensive Plan meeting. I cannot imagine where the notion that we were mandated by Homeland Security to put this fence up. Wait. Wait. There are a few enough people here, it's a contentious issue. I don't mind opening up the mic, but you're going to have to go to a mic, so let me finish what I have to say. Never did anybody mandate that. We applied to protect our water sources and in reference to a cafeteria style that you mentioned when you spoke tonight; there was that option in the beginning. By the time the Council made the final vote, Council voted and knew what fencing was going in what places. So when that final vote was made, those diagrams that were presented to Council for review, ahead of that vote, was very clear on what it was going to be. Okay? That's really all I have to add. Now before anything else, I want to ask the staff or any councilperson if they have anything we want to add, before we open the mic. Okay?

Vice Mayor Booros: Just one thing. I don't know if the public was aware. This went out for bid once before and nobody quoted on it, about a year and a half ago, a year ago, with Mr. Abbott. I don't know the exact date, but it was the same process, except he did not ask... he asked for barbed wire around everything; around everything; there was no decorative fencing involved. He did hand drawings that didn't show the topography of the land or anything; didn't schedule a site visit for the people to come see what the topography was and nobody quoted on it and it got shoved in a drawer, so we may have lost some time in doing this a year ago, a year and a half ago; whenever. I don't remember the exact date.

Kristy Rogers: We were awarded July of 2013 and a week later is when Win put it out to bid.



Vice Mayor Booros: So it's not quite a year ago; but nobody quoted on it, so it ended up in a drawer and then when Mr. Abbott was gone, we realized that we had this money that if it wasn't obligated by a certain date, we were going to lose it. It did go back that far. It was advertised in the newspaper, under Mr. Abbott.

Mayor Jones: Mr. Wingo, did you have anything you wanted to add?

Greg Wingo: No.

Mayor Jones: Mrs. Rogers? Any other councilperson?

Councilwoman Patterson: We have been talking about this for quite a while, even before I was on Council, I remember it coming up and I was under the understanding that we didn't secure Public Works. I guess I was a little bit confused whether we had to do it, or we applied for the grant, because I wasn't on the Council at the time. I wasn't, I don't recall. Regardless, we did talk about it an awful lot and that's why when we made the vote, we had all talked about it I guess eight times and even before that.

Vice Mayor Booros: Can I ask a question Councilman Collier? You have the grant in front of you. When did Mr. Russum and Mr. Atkins apply for that?

Councilman Collier: The grant was awarded on July 19<sup>th</sup> of 2013.

Vice Mayor Booros: But we don't have the application?

Councilman Collier: Wait a minute. Let me go a little deeper, because I've got a lot of paperwork here; I think I saw something... It was dated July 9, 2013.

Vice Mayor Booros: Our application?

Kristy Rogers: There was an application before that. In the 2006-2007 timeframe where the project was first discussed. At that time, we were not awarded a grant, until it came back around in 2013.

Vice Mayor Booros: Okay, so it wasn't from four or five years ago, when we first applied? That's what I was told.

Councilwoman Patterson: There's a recollection there.

Vice Mayor Booros: I didn't know there was another grant application applied for since then.

Councilwoman Patterson: Right, because I did recall being concerned that they were going to fence in the entire sledding hill. That was sort of talked about way before.

Virginia Weeks: We have heard the Council's perspective on how this went down. Now let me tell you what the citizens perspective of how we saw that it went down. We did see that it was on the agenda several times; but it was always we're going to put it out; we're looking at \_\_\_\_\_; we're doing this. None of what was planned. Nothing was ever made public to us. We have no way of getting what you're looking at, because there's no place we can go to look at your packets and we don't know that we have to FOIA it, because we don't know it exists. Just a moment, John.

Councilman Collier: I'm not going to say anything yet.

Virginia Weeks: Then all of a sudden on the Town... I also spoke to it because I was concerned about the lack of parking up there and you guys assured me that it wasn't going to be such a large fence that parking was going to interfere. Two, the next time anybody in the public could see anything, was when you put it on the

town website and the black chain link fence went up and I know Madame Mayor and I know Mr. Booros you got emails saying what are you guys thinking? And the answer back was well there are two examples; and then the chain link fence one went down and the black picket went up. Nobody in the public knew that chain link fence was what we were going to get. And they didn't know to ask about it, because they didn't know the documents existed and they didn't know how to get them. And even if we had wanted to FOIA, we have one week notice on an agenda and it could take a... legally they have two weeks to get the FOIA back to us. We shouldn't have to FOIA things like that. That's why there's anger in this town. You keep us in the dark over things that affect us, affect our livelihood, affect our esthetics, affect how we feel about the town and we are fairly hopeless because we don't even know what's going on. We know that you're talking about a fence. We know it's on the agenda. But there's no documentation. There's nothing we can read to see what you're really doing. Thank you.

Kristy Rogers: My apology first off, for not having these documents on the website each time, but until the last few meetings, is when we picked out a style and the big packet was prepared. A lot of times you didn't have a document to support the fence project; in the beginning it was just an update on where it stood. So again, my apology for not having plans on there, but never once was I contacted to supply any information and I certainly would have made copies.

Vice Mayor Booros: Was the Request for Proposal on the website?

Kristy Rogers: Yes.

Vice Mayor Booros: So when we sent it out for bid, the Request for Proposal, including the spec, the 90 some page spec...

Kristy Rogers: The advertisement was on the website. I don't know if the actual bid pack that...

Virginia Weeks: Not the specs.

Kristy Rogers: Pat Ryan had was placed on there.

Virginia Weeks: This is not your fault, Mrs. Rogers. This is the philosophy of this town that has to change, because it's making people angry, because everything is happening; we don't know about things until it's too late to talk to you about it. It's not your fault.

Jeff Dailey, 211 Gristmill Drive: If we can't see that we are at a nexus, that we can learn from this; that we can avoid this mistake in the future; come on. I've got a councilman who's saying, I'm willing to take it on the chin; you can hang my name on the fence; we shouldn't ever have to talk like that. Councilman Collier for you to run down how many meetings there were and how few speakers there were, you're doing this. And with all due respect, Mr. Thompson, you did the same thing when that propane farm came up, over in Cannery Village. You said, doggonit, if you'd only been at the first Planning and Zoning meeting. This is not working and I've said to you, if you want to look at checking yourselves, putting in a checks and balance system on revenue expenditure and tie to that a fence that's going to be there for the next 50 years. This is the thing that isn't working. Somehow and you said it yourself Kristen, you said I remember, it's been on the

docket for so many times. Okay? Well, as long as we have every seat filled and everybody coming to every Council Meeting and going to Planning and Zoning, in those kinds of numbers and with that attendance, we're going to be a great town. It doesn't work that way, as you can see. It really isn't working and it's a shame. If there's nothing that can be done, then that fence should be instruction on how this can never happen again. You said that Mr. Abbott was going to do a barbed wire topped fence everywhere. Hey, that tells me there should have been a public forum, well advertised, newspaper articles, get the talk going over backyard fences. Did that happen then? No. And if he had moved forward we would have had that for the next 50 years. So, thank you God for not putting barbed wire on top of it; but we don't want chain link fence, but it looks like we're getting chain link fence. Some kind of way. I don't know if we need a Sergeant at Arms, or somebody in the process to assist. Maybe we need a Town Manager. But something is not working. If we don't learn from this experience, right here and now, we are going to keep making the same mistakes; people are going to be angry; they're not going to know and we're going to be spinning our wheels. We have got to all take some reflective time and say, is this instructional; do we want to keep going through this or are we going to find a better way for our town. You all do yourself a disservice by thinking you have to do all the work on your own, but you are insulating yourselves from the townspeople and you've got to see this. I'm not kidding when I say installations that cost \$30,000 or more, that are going to be there for 50 years; that warrants a public forum, well advertised, a lot of chatter, get everybody out. Let you all hear from the citizens. It's got to happen. You all need to do this for your protection, for our protection, but for this gorgeous town. We have the diamond in the rough and everybody keeps missing that point. They weren't kidding when they said Milton is the next Lewes, because we don't have the traffic jams. We're just far enough away from the beach and just close enough. This is it guys and now you know why when people hear about how many ever quads are going there, next to the Historic District. People go like this, because, don't they get it? We're giving the store away. We're ruining ourselves. We are potentially setting ourselves up for the biggest fall ever, time and time again. Got to see it. Got to learn. Got to learn.

Mayor Jones: Just one second. I think it's time to ask Mr. Thompson, along with Mr. Wingo, who understands what has been ordered, what has been promised, what the contractor has done so far, in terms of work; procedurally, it's a legal question. There is no call for reconsideration and as Mrs. Weeks pointed out, that could not be done at this time anyway. So, giving back the money is not an option; altering the grant is also not an option at this point. You can't just do what you want after you've applied for something and it has been approved. Mr. Wingo, where is the contractor in terms of materials as of this date?

Greg Wingo: All the materials for all three projects have been ordered. They are going to start the first week in June.

Mayor Jones: And where are they going to begin?

Greg Wingo: Chandler Street.

Mayor Jones: So a question to you. In a legal sense. What is Milton looking at?

We can't do a reconsideration; we've not had a call for reconsideration. What does this mean for Milton at this point?

Seth Thompson: It sounds like you're answering a question that has a few different layers. Number one you have the Robert's Rules of Order issue and I've said it previously, your Charter discusses the fact that you are guided generally, by Robert's Rules of Order. So, unfortunately there isn't some great resource out there saying how to interpret the term generally? Which ones apply, which ones don't? That sort of thing. So that's one potential stumbling block you have here. The other one, obviously, is the grant deadline; but then, if it that weren't an issue, you have the issue of a quasi-contract theory; if not an actual contract theory, so in other words if you were to be able to convince a Judge, well no contract was really entered into at this point; and keep in mind, too; that this is something that is outside of the statute of frauds; meaning you don't have to have a signed contract, to have a contract. An oral contract in this type of situation would be enforceable; but even assuming you didn't have an enforceable oral contract, you'd be under quasi-contract in that it sounds like the contractor has already gone ahead and purchased supplies. In other words, he's relied on the perception that there is a contract here. So in the practical world, if the contractor is willing to make as much money on some substituted performance, then that's fine. Frankly, again you have the other stumbling blocks in the way of that, but it could be that the contractor said this is the project I'm going to make the most money on and therefore I'm entitled to receive my expectancy damages on this. I was planning on making X amount of dollars on this. So, legally, I think there are a number of hurdles in trying to turn back the clock.

Mayor Jones: In which case, I want to understand; if we defaulted on the grant by trying to alter it...

Seth Thompson: By not complying with it.

Mayor Jones: By not complying with it...

Seth Thompson: It could be that you put yourself in a position where you don't get the grant money, but you still owe the contractor.

Mayor Jones: That's what I think is going to happen. We're already at just short of \$7,000 coming from the taxpayer's to make up the money that won't be supplied by the grant and that, I believe, I just heard the answer which brings me the most fear; is that the \$30,000 will be returned and Milton will still owe the money.

Seth Thompson: It wouldn't necessarily be the entire contract price if they haven't...

Mayor Jones: Done the labor portion.

Seth Thompson: That's right, but it would be whatever their profit would have been...

Vice Mayor Booros: And the cost of the materials that they've already bought.

Seth Thompson: Unless he can use those materials on some other project; there are a few wrinkles to it, but the bottom line is even under a quasi-contract he gets paid to some degree.

Mayor Jones: Yes, Mr. Harris.

Ed Harris: The contract has gone through; the fence has been ordered; this is a

fencing company; I think there are three in the State and he's one of the largest. They usually have the materials bundled in a yard, behind a fence. This is rolls of black 7' tall fence. They don't order it, they have rolls and rolls and rolls. If you go up there and look at the yard, there's rolls and rolls of fence. Isn't it possible to say hey look, explain the situation; we have resident's... call the contractor and say look we have resident's who would rather have the picket fence. The picket fence is more expensive. He's not going to be losing any money; you're exchanging one material for another. I'm not even going to focus on that, because to be honest with you at this stage of the game, I could give a damn what I get across the street from my house; I'm talking about the gateway to the Town. That's what really bothers me. If you have any animosity towards me, I wanted a 12' fence on my property. When I drive into this town as a resident, we don't need that down there, that's a 30 year problem that we're going to be addressing and I'm going to tell you this; and I'm going to be honest. I'm going to tell you like I told Marion and John the other day, when I spoke to them. This is the legacy that you are leaving this town. This is the line in the sand for a lot of resident's and I'm going to tell you this; whether you believe me or not; it is the line in the sand. They are looking at what you're doing in this case and I have signatures here and you're more than welcome to look at them. Every resident up here, a lot of resident's from your community; the other resident's, they're looking at what you do and how you handle this case and they're saying, what are they going to do at the \_\_\_\_\_; what are they going to do with Elizabethtown? What you're doing is you're setting a tone for the rest of your administration. You have to ask yourself is this worth it? Because now you have people that are doubting your ability and clearly it has already happened. I don't want to see that. My whole purpose to come in front of you in the beginning, eight meetings ago, was because those of you that know me, I've been here 20 years; I love this little town. I love it. Like Jeff, I see the potential. I know you have it in your heart. I know all of you love it too. It just didn't make sense to me; when chain link wasn't more secure; when a 7' tall chain link fence \_\_\_\_\_; it's going to happen. You mark my words. They're going to be calling you, there's a cat in the enclosure by the water tower, come and get it. Well the kids are going to be crawling over the chain link fence. You've opened up a whole ball of wax and I really don't think... but back to this. I can't believe as adult people that we can't talk to this contractor and say look, you're not going to lose money; work with us here; can't you work with us? Yes, you can stick to these rigid guidelines and I don't think Jennifer up in Dover is going to be that rigid either. I think if you sit down and talk with Jennifer, who is DEMA (Delaware Emergency Management Agency); she seemed rationale to me when I talked to her. I know everybody also started calling her too; then she got upset; but she seemed like a nice, educated person. There are ways to do this like a gentleman and there's ways to just \_\_\_\_\_, guess what? Wouldn't you rather have walked away from tonight or have them put in the press and said you tried? You made an effort. Rather than saying you know something, we've done it, screw it. This is what we've done, because to be honest with you, you kind of procrastinated on this. We are getting

awful close. Before it was a month ago. I think when this whole thing started with the petition it was about a month ago. Here we are, a couple of weeks away from it and it is kind of ridiculous. If I were a contractor would I be angry? I probably would be, but I can't believe that you can't call him and say look; explain the situation, say you have numerous resident's that are unhappy; we're willing to work with you and again, if you want to take a look at the budget, as I said, there is money out there; previous administrations have done it; all you need to do is call your local representatives; go on their website; go on the Delaware State website; pull up grants, they come up. I gave them to Kristy, you have them and if you don't use them for this fence, use them for something else. It's a tool that you can get money for, but I just cannot believe that in this day and age, as civil people, that we have to say it's done and my biggest fear is, and I knew it... the other night when I watched you and Estelle and Emory vote, I knew you knew. That's why I was so frustrated and I ran out of here and you didn't realize, what you were voting on. That you didn't have to have a fence. That you did not have to put... we don't have to put any of these fences in Estelle; we have the grant and we don't want to lose it, fine, but we don't have to do it. What you're saying is, you all have chosen for the next 50 years chain link fence on Front Street and chain link fence on that and by my saying that out of anger, because I am frustrated; would you be proud enough to put your name on a plaque on this chain link fence? Do you want a plaque that says the following council people installed this fence on Front Street and if you're proud of that, then I'm going to tell you something; the town is doomed. It's doomed. We're in big, big trouble. If you think that's adequate for what this town deserves, and the resident's deserve, we are in big trouble.

Seth Thompson: I don't think so. There was an initial question in the beginning... in terms of the law, obviously I lay out the law; can people agree to something else, of course; I just have to lay out what the potential ramifications are, if the person says go back \_\_\_\_\_.

Ed Harris: But he couldn't hypothetically. He could alter the contract.

Seth Thompson: Yes, he's free to do whatever he wants.

Ed Harris: John had a wonderful idea, if nothing else, we were talking the other day and John had a great idea; \_\_\_\_\_ to use the chain link, rather than putting it on the street level; push it back to the building level, so at least you didn't have to see it on the street level. I mean that was a great idea, John. At least you aren't going to drive through a corridor of chain link fence on Front Street.

Councilman Collier: It was a good idea until somebody pointed out to me that it doesn't secure the entire Maintenance Yard when you just set it back to the corners of the building. And I know that you say that it's non-secured; it's only a deterrent; that's all fences are, they're a deterrent.

Ed Harris: I want to say something.

Mayor Jones: Not from there.

Ed Harris: I'm sorry. You don't need to hear more from me. You've heard enough from you. But I'm going to say do you know they're talking about moving the Maintenance Yard over where the water tower plant was going to be? Getting it



off the river.

Councilman Collier: Oh yes, I remember that, but it didn't happen. Did it?

Ed Harris: Down the road...

Councilman Collier: It didn't happen and if it goes down the road, that's great.

Ed Harris: Down the road...

Councilman Collier: But we don't know if it's going to.

Councilman Coté: It solves the problem.

Councilman Collier: It solves the problem, but the one thing that you've discussed and I need to bring this up, because this needs to be said. Yes, we can talk to the contractor; maybe we can negotiate a chain link fence, but nobody seems to want to remember where does the additional funding come from? We're already reaching into taxpayer dollars to cover basically what's going up in the form of decorative fence at this point.

Ed Harris: I understand.

Councilman Collier: So in order to covert it over to what you all would like, just on the hill alone, is almost \$12,000 and that doesn't include what goes down in front of the Maintenance Yard, nor does it include what goes out here behind the school; which nobody seems too concerned about that out there, because it's not in your gateway or the physical site.

Ed Harris: No we haven't said that. To be honest with you, if I had my way, the school out there would have the picket fence on it also. It's antiquated.

Mayor Jones: Absolutely.

Councilman Collier: This is the point though, it comes down to a matter of dollars and sense, as well as anything else, and you know I'm all for doing the best I can with what I have to work with.

Ed Harris: I agree with you John, but when you're talking about resident's who are paying taxes in this town, that have properties that are worth millions of dollars, you're going to tell them that you're going to sacrifice the image of this town for \$30,000; you have a lot of explaining to do, because you're running the town like you run your own personal budget. There also is money available that you haven't even looked into. There's grant money. If we want to talk about money that was... and I don't want you to go back to other issues, but you spent money on other things, which didn't help the other image of the town; that's what they're all talking about. So tit for tat. Sometimes you have to make an investment in the town to bring money back in and that is an investment in the town, the image of the town. It's the same with the signs and I've told you the other day. At one time you gave the Economic Development Committee \$13,000...

Councilman Collier: We did not.

Ed Harris: Instead of going to Dogfish Head and saying, look, why don't you contribute \$10,000 towards the sign, because you have the money and you have the... we need to take a look at other ways of generating income in this town...

Councilman Collier: Well let's clear up something right now about the money for Economic Development Committee, the signs; that came in the form of a grant from the Economic Development Office...

Ed Harris: Grant money. Absolutely.

Councilman Collier: So that's not town monies.

Ed Harris: I don't want to get into an adversarial relationship with you.

Councilman Collier: I'm not trying to be adversarial. I just want to clear the air, because this is how some of this stuff begins, because of misinformation.

Ed Harris: Well, John, to be perfectly honest with you, if you want to talk about misinformation, a lot of it did come specifically from the Council, because the reason why it wasn't pursued, you kept on pushing it, pushing it the 8 weeks is, because myself, along with other people, were told directly that there was going to be the picket fence used around these buildings. If there was not... You did John.

Vice Mayor Booros: No, wait a minute. I'm one of seven votes. I said that...

Ed Harris: You are the Vice Mayor of this town and you told myself and other resident's and this is a direct quote that we will be using the ornamental fence around the front and the sides of those buildings. That is a quote from you, directly. You are the Vice Mayor. At that point, I would have rallied the resident's together to fight this a lot sooner. I trusted your judgment, your word, along with other people who you told the same thing to; at least three others. I'm telling you... I didn't want to bring it up, but...

Vice Mayor Booros: You can bring it up because I'm going to tell you right now, I'm smart enough to know that I'm one of seven votes. I've said that since day one. I cannot tell you that what these people, these other six people are going to vote for. I made sure that that Request for Proposal went out cafeteria style; not just for barbed wire fence, like Mr. Abbott put it out for; I wanted it out there, because of course we wanted to get the most for our buck.

Virginia Weeks: But we never saw it.

Ed Harris: We never saw that, number one, John; but also I trusted your word as the Vice Mayor. That's what you said.

Vice Mayor Booros: This Vice Mayor does not make independent decisions; you know that; you've been on Council...

Ed Harris: But you were asked directly.

Vice Mayor Booros: Excuse me, Mr. Harris. I'm one of seven votes. The Request for Proposal came back; these people had no idea. I had no idea what the cost was going to be when that Request for Proposal came back and what it was they were going to be able to buy with the money that was allotted in the grant. We didn't have a quote the first go around from Mr. Abbott; so we didn't know what the cost was going to be. When the original application for that money was submitted, way back in 2006, 2007 or 2008, it was based on quotes Dustan got for barbed wire back then. I think. I don't think it was for decorative fencing or anything else. I made sure that they did cafeteria style, so that if they could use decorative fencing in areas where it was going to be seen, we had the option for decorative fencing. How they chose to pick and choose that last night of where the decorative was going to go and where the chain link was going to go; I wasn't here that night. I wasn't even part of that vote that night.

Ed Harris: I wanted to get clear so that the press gets this clear; this is not and

this is where we have a problem; this is not decorative fencing; this is the number one choice for security around municipal buildings; it's around the White House; it's around every institution in Washington, DC; they do not put chain link fence in, so let's not make it like it's fleur de lis and pretty pretty gaga; it is security fencing. In essence, what you're actually doing is the contract that you currently have is enabling children and everybody else to climb over chain link fencing to have access to a building; because I'm 52 years old, I can do it; so can a kid do it; where as if you have picket fences, you have no foothold to get over the fencing and that's why they have spikes on the top. So let's dispel this whole decorative. What you've basically done, you are surrounding your buildings with a fence; that is securing nothing and in the meantime you're making it an ugly mess. Let's just be honest about it. It's done. It's done. Be proud of it and go on. It's over.

Mayor Jones: Understand that in order for any contact with the contractor, it is not one person's decision on that Council, to do that. There was a vote taken. The vote indicated majority, that we would go forward with the plan that was spelled out in that final package. It would only take a vote of Council, that's reconsideration to turn this around and allow us to contact the contractor. I will not do that, personally, against the wishes of the Council. I have a vote in front of me. Then you could ask about my own integrity, if I was willing to do it on my own would be improper. Mrs. Weeks, you wanted to say something.

Virginia Weeks: If you need \$30,000 to fix the fence on Front Street, that's a one time assessment of about \$15 per resident, of the 2,000 people; a one time tax of \$15 and you can't do that?

Mayor Jones: But Mrs. Weeks, there aren't 2,600 people here asking for that style of fencing and agreeing to a raise of even that amount.

Virginia Weeks: It's a one time. By the way, there aren't 2,600 people here. Mr. Harris had a week for that petition and he got over 200 signatures. That's a tenth of the town in one week. Read the writing on the walls folks.

Mayor Jones: I do believe that and this is just a shot in the dark, so feel free to correct me. I think the article that was in the Cape Gazette while I was away, which contained a lot of incorrect information; may have been indeed what brought some of your petitioners forward and I'm not claiming that is how you got the votes; I'm just saying it's a variable.

Ed Harris: No, actually you're not correct. It just spread.

Mayor Jones: Okay. Okay. Okay.

Virginia Weeks: Actually that article said that the picket fence would be installed and it was going to be voted on on Wednesday night. People should have known that it wasn't going to be voted on Wednesday night, because it wasn't on the agenda. Everybody was really happy.

Ed Harris: [Unintelligible].

Councilman Collier: What article did he read?

Councilman Coté: I'm not sure what article you've all read. The article that I read, which I believe we spoke to Mr. Evans about a meeting ago, had a few errors in it. The one that said the picket fence for lack of a better description was going around the Maintenance Yard. That's an error. The article also said that the

additional cost for the picket fence, was \$6,000; would cost the Town \$6,000; which is another error, because the fences, as they were approved is going to cost the Town \$7,000 and the calculation was made that it would cost at least another \$10,000 to \$12,000?

Councilman Collier: A little over \$12,000.

Councilman Coté: To use the picket fence.

Councilman Collier: Just on the water tower properties on Chandler Street. That doesn't include the Maintenance Yard, it doesn't include the tower out at Shipbuilder's; if you include those in it, it comes out to a little over \$33,000 increase.

Ed Harris: John...

Councilman Collier: Wait, I...

Ed Harris: You want me to be...

Mayor Jones: You can't speak from that seat.

Ed Harris: You all made a decision to put it around the Maintenance Yard. That's why the grant was stretched.

Councilman Collier: No. The grant was written in that fashion and if you'd like to see the detailed language in the grant...

Ed Harris: But in essence you chose to make it exceed the grant, is what I'm telling you. You chose by adding the addition of the Maintenance Yard to make it \$7,000 over.

Vice Mayor Booros: The Maintenance Yard was in there to begin with; in the original grant.

Councilman Collier: It was in there to begin with.

Mayor Jones: In the original application.

Ed Harris: Oh, but then you could have altered it, though; you could have taken it out or done whatever you want to. It doesn't make any difference, what you're dealing with, is what you're dealing with. All I'm asking is one of you councilman to do what Mayor... to possibly vote to reconsider it? One of the council people? And talk to the contractor; just to at least show the residents that you made an effort. Maybe he'll say no; kiss my butt; I would at least make an effort to show the resident's you're trying, just to say you're throwing up your hands.

Seth Thompson: A motion for reconsideration... we seem to be talking about something slightly different than that, that being... approaching DEMA and the contractor for some sort of substituted service. I take it that's where we are going with this?

Councilman Collier: That's what would have to occur.

Ed Harris: Not necessarily. Seth, what you're saying is to set the fence back a little bit. I'll give you an example, say when they did the fence posts out here, at the Maintenance Yard, they discovered there was a concrete impediment; they can't put footers in and they say, guess what Mr. Mayor, Mrs. Mayor, I'm sorry; I can't put the fence to the street, because there are concrete footers; I need to push the fence back; you're going to tell them no, I can't do it because there's a grant for it? No you're not. You're going to say, adapt the fence to the location. All I'm

telling you to do, is to talk to the contractor, or asking you. I'm not telling you. I wouldn't tell you to do anything. Ask the contractor if he can work with you on several things. At least make it look like you're making an effort.

Seth Thompson: I would view an infield or on site adjustments as something different; those do come up, but my concern is and maybe I'm misunderstanding what the notion is, but substituting performance with some other type of fencing; we need to make sure that...

Councilman Collier: The funding is available.

Seth Thompson: As well as....

Vice Mayor Booros: It's negotiating a Change Order and he can ask for more money. It's what I did for 37 years. You negotiate a Change Order, so it's like starting all over and your negotiations with the guy; what's he already got invested; and the new stuff and it all has to be done by the 15<sup>th</sup> of June; installed and paid for.

Seth Thompson: Well, the other wrinkle to this obviously, I think if I'm remembering Mr. Ryan's comments correctly, depending on what selections were made, changed who was actually the lowest bidder; so you couldn't get into a scenario...

Councilman Collier: No. No. That's not the case.

Seth Thompson: That wasn't what he said.

Councilman Collier: That's not the case. It didn't change because there was a menu item and one bidder was at one price and the other bidder was significantly higher for the same item. We went with the low bidder across the board.

Seth Thompson: Okay. Alright, good, because that's obviously one additional wrinkle.

Vice Mayor Booros: How many bids did we get?

Seth Thompson: Two.

Vice Mayor Booros: Just two?

Virginia Weeks: On the website, there was originally the chain link fence; when some people said, are you crazy? It switched to pickets.

Vice Mayor Booros: I called Kristy and I said get the picture of the chain link fence off of there. I called Town Hall and said get the picture of the chain link fence off there.

Virginia Weeks: Why:

Vice Mayor Booros: Because I started getting phone calls.

Virginia Weeks: Yeah but if it's what you're going to do, why even...

Vice Mayor Booros: I didn't know that that's what they were going to do, Mrs. Weeks.

Virginia Weeks: Well that's my question.

Vice Mayor Booros: Until the quotes came in.

Virginia Weeks: Well that's my question, John. I want to know where in the minutes of any meeting you decided to use chain link fence, rather than the picket fence? Where was that decided, in the public and voted on?

Seth Thompson: Well part of it was the approval of the Request for Proposal.

Virginia Weeks: Well we never saw the Request for Proposal.

Seth Thompson: But the Council did.

Virginia Weeks: But they have to do this business in public.

Councilman Collier: There was an Request for Proposal that went out that originally showed entirely chain link and it ran down concurrent with Mr. Harris' property line to the right-of-way line along the edge of the street; circled right on down Behringer and Chandler.

Virginia Weeks: When did you decide that the Request for Proposal would be chain link?

Mayor Jones: Let the councilman speak.

Councilman Collier: Excuse me, please.

Virginia Weeks: Sorry.

Councilman Collier: I'm trying to explain the answer to your question. That original time that it came forward to council, that showed chain link across the entire front; there wasn't even a consideration for a decorative fence in the first Request for Proposal that I saw come through here, because we had to have Mr. Ryan go back and rework the entire thing. And Mr. Harris came forward because somehow he at least knew where to look or had an idea it was coming; because he came forward and he made some statements and he showed some pictures and he came forth with some examples and it was all Mr. Harris' first appearance before this Council regarding the fence, the project was scaled back to the point where it now only encompasses along the top of the hill. What he represented through photographs as his view, we have placed the esthetically pleasing fence and across the front of the water treatment plant is esthetically pleasing fence; which is down parallel to the street. This was as a result of citizen input; so there was a citizen; there was input. Mr. Dailey can raise his hand and he can speak in a minute and Mr. Dailey I would love to have a meeting every time we wanted to do something here; but you see the process we're going through now?

Virginia Weeks: Because you didn't.

Councilman Collier: Mrs. Weeks...

Virginia Weeks: The thing is you had an Request for Proposal. I agree. You had an Request for Proposal. In it it called for chain link fence. Why did you ever put picture of the picket fence up? Why did you ever even let us think there was a choice?

Vice Mayor Booros: Because the Request for Proposal had both in it. A choice.

Virginia Weeks: Thank you very much. You see here it is, it's coming out as we talk. When did you decide if it had both? When did you vote to do chain link fence and was that vote in public?

Councilman Collier: Yes.

Mayor Jones: Yes.

Councilman Coté: It was at the meeting.

Virginia Weeks: And it said, we're doing chain link, not picket. Could I get a copy of that?

Councilman Collier: It actually is for a combination of both, is what we voted for.

Ed Harris: I'm a little troubled now and I'm going to tell you why.



Mayor Jones: Helene, our transcriber, is going to be a little troubled if you don't start to identify yourselves. Thank you, Helene. **Thank You and you're welcome, Marion.**

Ed Harris: Part of your issue with this whole process was the budget and being over. Now you're telling me that the scope of this project was a lot larger; you were going to fence off this whole area up here? So then why are you complaining about spending more money on the decorative fence when you were going to spend more money from the initial project?

Councilman Collier: We did not know what the original project would have cost, Mr. Harris.

Ed Harris: Do you get my drift? You were going to fence in that whole hill.

Vice Mayor Booros: No, 4-1/2 years ago we had applied for the original grant.

Councilwoman Patterson: Right. That was never discussed. I don't think any of us would have agreed to fence in the whole hill.

Ed Harris: John just said you \_\_\_\_\_ the project in.

Mayor Jones: We did.

Councilman Collier: We did, based on your concerns.

Ed Harris: Not based on budget.

Councilman Collier: Not based on budget. We did not know what the price was going to be then. We did this based on your concerns, Sir.

Jeff Dailey, 211 Gristmill Drive: You all are making my argument for me. The Mayor says 2,600 people can't decide on a \$15 fee; then Councilman Collier says one person stepped forward and an entire project was altered because of one citizen stepping forward. That doesn't make sense. Now, I want it said for the record, I have carried the banner many, many times for my friends and neighbor's over in Shipbuilder's; they have lots and lots of challenges. I myself said, save money, don't put black chain link fence, put the galvanized black, because it is not a focal point for an entire town. Two or three houses see it. We could plant Leland Cypress in front of it and I don't think anybody's nose would be out of joint because they bought houses that look at a water tower base, so come on. You could talk with this contractor, some kind of way. You could look at making the payment of the extra cost over time; the guy is not going to go out of business on our \$7,000 additional expenses. There are lots and lots of options and Madame Mayor, 2,600 people; if this doesn't tell you that you have got to put in place, as an Honor Code, looking at fixtures that are going to be in this town for 20, 30, 40, 50 years that cost lots of revenue; if you can't say to yourselves tonight, every one of you, we will not let this happen again; this will go to public forum, workshop. We will make sure that we don't get to the 11<sup>th</sup> hour with our backs up against the wall. If you're not proving my suggestion and that's all it is; you adopt it however you want; but if you want to be putting yourselves in this same situation again, I say, I have no faith in any of you and yet I think you're a great Mayor and Council; but you've got to see and I think Mrs. Weeks' is right. I thought decorative fence was going there. I really did. And Mrs. Rogers when it appeared on the website, anybody who looked at the website, who was even vaguely familiar with what had come up before Council eight times, but not in

public workshop or forum; I think they probably thought, like I did, oh they're going to pick this very attractive fence. Okay? You generated a misconception and then you wisely put in a buffet, okay, different options...

Vice Mayor Booros: Because we didn't know the cost.

Jeff Dailey: But in the meeting, in the meeting where you looked at the dollars and sense, you all converted to chain link fence. And again, that is shutting out the public and I'm almost 90% sure, that that's what happened. You looked at the dollars and sense and you went for chain link fence. And then you voted. And you voted against it and four other people, as I remember, voted for it. Okay? And you shouldn't have to wear that shoe. It's going to pinch for a long time; because there was not 2,600 people represented in a workshop, or even 10% of that, which you now have on two petitions. You see? You're fighting yourselves; you really are. We've got to learn from this. We've got to do it differently.

Mayor Jones: Stand still.

Jeff Dailey: I'm going to try.

Mayor Jones: First of all, I believe my comment was, that we cannot impose \$15 extra tax on 2,600 people on the recommendation of one. As soon as you convert that over and say well, there were citizens, 200 or so, that were not happy so we're raising your taxes by \$15, temporarily. That will bring people to the meetings. One. And the other thing actually, if you would like to sit down again, I have to repeat and I will repeat for all of you and Mr. Thompson will correct me at any moment I'm about to say anything wrong. You used the singular you... you can contact the company. I'd be the first person to make a phone call. Not without reconsideration and a call for reconsideration by Council.

Jeff Dailey: Understood.

Mayor Jones: Reconsideration has already been pointed out to me, the Mayor, that that is not done, unless it is done at the same meeting that the vote was taken and the only way that it can be done, is for this Mayor to suspend Robert's Rules of Order, which I have the authority to do by Charter. Won't happen. It already was pointed out to me. I already fought former Mayor Post when it was put in the Charter.

Jeff Dailey: Madame Mayor, the shoe is going to pinch. If you...

Mayor Jones: Let me finish. Mr. Dailey.

Jeff Dailey: Yes, Madame Mayor.

Mayor Jones: I cannot be expected to flip flop on an integrity issue that I already took a stand on. Now if Mr. Thompson has another way to have this happen, have the Council in agreement to come back and renegotiate with the contractor, I would probably make the phone call. But you're talking about an awful lot of government rule to get through, to get there.

Jeff Dailey: And I'm just going to say to you all, the integrity of every one of you is hanging right now by a thread and I'm going to say this and I've said it before, I think the purchase of the house across from Town Hall was a great move. Okay? And I understand that real estate negotiations have to take place in a degree of privacy, in a vacuum, if you will, okay? But that was \$150,000 of taxpayer's money that nobody knew about until it was in the paper. I think it was

the greatest purchase ever, if all we get out of it is an overlook to Wagamon's Pond. I think this town is enriched by it. That's a \$1 million view; but don't tell me that because you went up against some former Mayor and said you would never suspend Robert's Rules of Order; don't tell me that, because that is ludicrous. My opinion.

Mayor Jones: Mrs. Weeks would you like to comment on that?

Virginia Weeks: On what?

Mayor Jones: On the fact that you are the person who brought reconsideration to my attention.

Virginia Weeks: I did and I will stand here and I will say that Robert's Rules of Order, I believe that there are two ways to undo a vote. One is reconsideration and one is to rescind. Reconsideration has to be done on the day of the motion and to rescind it, nothing can have happened and a contract has been let at a velocity I have never seen this town move in and so we cannot rescind it either. Now, as Mr. Dailey said, and I understand your moral predicament, but you know guys you've got to come up with the money and fix the Public Works fence. That's what you have to do. It comes down to that. There was no vote in public. And as far as the house goes, I'm going to say something, I'm going to say now; I read in the newspaper about the house being bought; the Mayor said it was to expand Town Hall and perhaps for non-profits; then Vice Mayor Booros said oh no it's for parking. There was never a public vote or discussion on does the town need to expand it's parking. Never. There was never a public discussion or a vote on does the town need to supply space for non-profits; no matter what the excuse for buying the house is, that policy was never set. There was never a set policy saying we really need to look into the parking; never a discussion of it in public. Not until after you paid \$150,000, \$30,000 of which could fix this problem, for a house. But you never set a policy of why you bought that house. You never said, my God, we need to look at parking, or OMG we need to look at expanding. That never happened. There was never a vote. There was never a public discussion. Once again nobody knew anything until it was in the paper and you have to understand. Madame Mayor, Councilman Collier, imagine what you would do if Don Post had done that? Thank you.

Seth Thompson: Just really quickly, with regard to the property, which really isn't on the agenda, FOIA covers preliminary land acquisition discussions in the Executive Sessions, so that the Town can maintain it's bargaining position. So there was a final discussion and vote in public on that. There was also a vote in public on the fence when the bids were opened and discussed. So, the Robert's Rules of Order issue, again, I'm just going to note that your Charter does reference a general following of Robert's Rules of Order, however, tonight we don't need to reach that decision, I think, in that what people have been discussing hasn't necessarily been a Motion to Reconsider, but rather what might be viewed as a Motion to Authorize a town official to contact DEMA for a grant modification and the contractor for a contract modification. So I would view that as something different, than rescinding the prior vote. That type of vote, again, I will caution to make sure we're speaking in number one, I think the person needs

to understand what exactly they're asking for with regard to a contract modification and the grant modification. I take it the grant really is almost an extension of time, although I haven't looked at the grant specifically. But the other element to that obviously, is the person needs to be authorized so that they have some sort of authority to speak on the subject. But again, I view that as a different motion than a Motion for Reconsideration. One other word of caution as I look over the grant is, again, we need to make sure that person is the lowest bidder, if Council is really, truly inclined to authorize somebody to discuss this. Councilman Collier: They are the lowest bidder, across the board. Irregardless of what kind of fence goes up, it does not change the scope of work. The scope is that we're putting fence around our Public Works facilities, so that much I can tell you.

Seth Thompson: So if the issue just the material of the fence, it sounds...

Councilman Collier: That's what I'm hearing, but that's just what I'm hearing. I've had my own issues.

Mayor Jones: So under Old Business, Mr. Thompson, where it says discussion and possible vote on the following items, the item is listed as Security Fence Installation Update. May I ask the Council for something other than reconsideration, if anyone wishes to make a motion? Is that acceptable?

Seth Thompson: It is. The agenda doesn't note it specifically as a Motion for Reconsideration or a Motion to Rescind. The agenda as a Joe Q. Public Member would read it, would seemingly know that there could be a possible vote, with regard to the Security Fence.

Mayor Jones: Does anyone on Council have anything to add to this discussion at this time?

Councilman Coté: I just have a thought in here. If, in fact, all this fence were to be changed for this paltry sum of \$30,000 and we don't have a \$15 assessment per person yet; where is the \$30,000 going to come from and, and this is more of a rhetorical question; would that \$30,000 be better served going toward the repair of the crumbling water tower foundation at Shipbuilder's, which we have estimates, no bids, but estimates for a couple of different types of projects that range from roughly \$200,000-\$350,000; which in my view, I think repairing that water tower foundation is a more compelling project.

Mayor Jones: Anyone else from Council? Mr. Wingo, anything to add?

Greg Wingo: On the contract, what I am aware of if we were to look at it to try to change this up or change that up, the right way we're going to have to do it is put it all out for bid again. The contract when the contractor's bid on this, they bid on all three sites and as Councilman Collier had said about Able Fence being the lowest bid, we don't have the time to hit the deadline, if there are any changes at all. In the eight years that I've been here, the maintenance shop has been broken into several times; several things have been stolen in the maintenance shop. Under my water license, as it stands right now, not having a fence around the water treatment plant, around your pumps, around your water towers it's putting me at a huge liability, in case of break-ins here and there. I'm not saying fences are going to stop everything from happening; but this is in my eyes a big start to

that process. I had scaled that fence back actually twice, in my time of working on this project. A lot of the decorative fencing, so to speak, the aluminum fencing; it's not strong at all. You could go right up to it and you could just bend it and you could just go right in it. The chain link fence, I think the original plans it was galvanized fence. I changed it to black. I took the barbed wire off of it and it doesn't look that bad of a fence and we need it and we don't have any time to keep talking about this. We've got to move on on this, or it's just going to be another dead project that the Town of Milton just let go. Vandalism up on the hill, we've had plenty of it since I've been here. Since we don't have anything out there, to protect anything; this fence is a great idea to start with this process. Then, down the road, cameras, and something else we could try to throw in, as the time goes, but we don't have anything at this time and I've put quite a few hours in on this project; trying to listen to all of our Council and what the residents do want and I think we've put together something really good. That's all I've got to say.

Vice Mayor Booros: Madame Mayor, may I make one comment with regards to what Mr. Wingo just said, as far as the "decorative fencing" or whatever it is. I've heard it referred to as the White House has it, steel fencing... this stuff is not steel fencing, it is aluminum fencing. The White House might have wrought iron fencing, but one good kick with your foot will bend that aluminum post and you just crawl right through it.

Councilwoman Patterson: I have to agree with that. I was driving past and there was a decorative fence along a roadway that I pass and it was all dented and I couldn't figure out how it would have gotten dented up high and down low and...

Vice Mayor Booros: It's not steel. It is not steel. It is not wrought iron and I've heard over and over again like the White House, all the government buildings. Those government buildings in DC have wrought iron fences around them. The White House has had one around it for 100 years. This stuff is not wrought iron fencing; that would be way out of our league. This is just aluminum fencing.

Councilwoman Patterson: Mr. Wingo, I want to thank you for making all those points. They do provide a lot of information for us.

Councilman Collier: May I? Alright, well, I wasn't going to bring this up, but I'm going to now. I don't know how many other people took the time to walk up on that hill; I actually took the Mayor up on the hill and showed her what was up there and how the fence ran and what struck me as odd was, I didn't notice it until I got up on top of the hill and it became more apparent to me was the amount of stuff that are in adjoining properties up against the existing fence. So, someone met us up on the hill while we were up there and they talked about how people coming down Chandler Street to Behringer would be looking up on the hill and seeing this, so I stood on the hill, while we were there and everybody that came down the street and we were there some time discussing this with this individual; everybody that came down the street, I waved and I didn't just throw my hand up, I waved and not one person noticed us on that hill. The black fence, at that distance, I went up and I painted a stake for my own reasoning; I painted a stake black and when I went up on the top of the hill and I drove it and I walked down

into the park and by the time I got to the bottom of the hill, I had a hard time picking out the stake and if I turned my back and just walked and then turned back and looked and tried to find it, it took me some time to find it. Now, I'm not sure that's the esthetics that people are really concerned about; they're concerned about what's on Front Street and when you ride down Front Street, the first thing you're greeted with is what's known as the "coops"; it looks like an old migrant labor house; nobody says anything about the "coops"; we have chain link fence around the marina property, nobody says anything about the marina property; you have chain link fence around the wastewater treatment plan, nobody seems concerned about that on the gateway; you go up to the old chicken plant that the fire company has bought, chain link fence again and nobody's concerned about that chain link, rusted, barbed wire on top, dilapidated and all of that. All these things are in this gateway and the only focal point now is a brand new fence going along there. When I moved into my neighborhood, it wasn't all that well kept and one of the things that I've always done is keep my place, as best I can, in my yard and my home and what I have seen in that time is neighbor's who didn't use to, now do; so sometimes you have to clean up in one spot and it embarrasses people to clean up in another, or it moves them to do that. So that's where I stand on this thing. I think a lot of this concern has been sensationalized. I've yet to see a petition.

Vice Mayor Booros: I saw it tonight.

Councilman Collier: I've only been told about it. Well, a petition, in my mind is not valid until it's presented and unfortunately these people got up and walked out, with it in their hands.

Vice Mayor Booros: Councilman Collier, I did have a neighbor approach me today about the petition, that she had signed and she indicated she didn't understand how we would put decorative fencing around the Maintenance Yard...

Councilman Collier: A misnomer.

Vice Mayor Booros: How could you be doing this around the Maintenance Yard and putting that stupid chain link up there around the other one. And I said, no, that's not how it's going. The chain link was going around the Maintenance Yard and the decorative fencing was going along the roadway there at the bottom of Chandler and the chain link up on top of the hill. They were mislead to believe that... now the people that have spoken tonight want the decorative fencing around the Maintenance Yard. This particular neighbor that signed the petition, didn't want the decorative fencing there; she wanted the decorative fencing up around the water tower.

Councilman Collier: No.

Vice Mayor Booros: So I think there were a lot of people that might have signed that petition, or alleged petition...

Councilman Collier: I've got to tell you, this is the worst decision I ever made as a council person. I'm not going to lose sleep over it.

Mayor Jones: Mr. Wingo, I've put a great deal of faith in you; this Council has put a great deal of faith in you in the position we have asked you to assume. I trust you and I appreciate your comments. Mr. Thompson, however, has advised



legally that he does not believe that any change in the contract or attempt to negotiate would require it to go back out to bid.

Seth Thompson: I think it's staying within the scope of the Request for Proposal that was already put out; so in other words, it's not something that's different from what was asked for bidding previously. I think you point's well taken, that it can't be a bait and switch; that you bid one project; get the bidder that you want; and then ask them to do something very different from what you asked before. Legally, I think it's okay. Now I also know that there's what you can do within the law and there's what people think are good ideas.

Vice Mayor Booros: I assumed there was a changes clause in the contract that we made with the company, that allows us to issue change orders to the contract and it would not have to go out for bid. You could negotiate a change order at any given time and as long as it is for fencing, it's within the scope and as long as they quoted cafeteria style, all the way around, by the foot, or however, I don't remember how it was quoted, you could ask them to make that change.

Mayor Jones: By the way, my statement also did not advocate giving back this funding. What I am preparing to do tonight, however, after you speak, you speaking will give this council a moment to think about what I am willing to do, which is to entertain any motion that this Council may want to make to send a representative of this Council forward, to talk to the contractor; that is what you need to consider for the next minute, because we're going to hear what Mr. Wingo has to say.

Greg Wingo: So legally you're saying if you change that contract on what kind of fence that you want to put up now; that you don't have to take that back to bid?

Seth Thompson: The way the bidding was done, I think everybody, all potential bidders had the opportunity to put forward whatever bid they felt was appropriate for something that the Council might now consider, as well as what was previously approved. So again, if it were a situation where we were asking the contractor to change something that had not actually been bid in the Request for Proposal, I think that's a different scenario, but here, in essence we would be able to look and see if indeed, the current contractor is the lowest bid for what the town is asking to change to, potentially. I hope that makes sense. In other words, it's as if the Council potentially approved something different based on those bids that were discussed on the night where the particular option was chosen.

Greg Wingo: I don't understand that and I don't agree with that, because you're changing up... What I'm gathering is perhaps you might want to put all decorative fencing up, instead of using chain link, so you're changing your product.

Seth Thompson: Which was bid, right?

Greg Wingo: The way it was bid was your sections and your footage, so there was a certain footage of your chain link and a certain footage of your decorative; that's how it was bid. It wasn't bid on just a certain footage of all...

Vice Mayor Booros: Was it a price per foot, for each of the different fences?

Mayor Jones: Yes.

Seth Thompson: There was, so again, I think you could look at the bids and see this is how much it would have been if we had approved this, as opposed to if we

had approved that. Your point's well taken. I would just take a step back and think the purpose of competitive bidding obviously, is to get the lowest price and to put all the potential bidders on equal footing. I don't think any other potential bidder has an argument here. Well, had I known that was going to be the project, I would have bid differently. That's not the case. They did bid. Their bid included potentially what the Council's discussed.

Mayor Jones: And by the way, I'm not talking about a motion to open it up to revisit the whole thing. I'm talking about Front Street.

Vice Mayor Booros: Can I ask how long you think the lead time is on the decorative fencing vs. the bundles and bundles of chain link fencing they have behind their warehouse.

Greg Wingo: That is actually, I believe what he's waiting on. I believe that he did have the black chain link fence in stock. He had to order the decorative fencing.

Vice Mayor Booros: Do you know what the lead time on that was?

Greg Wingo: Three weeks.

Vice Mayor Booros: Okay, so three weeks from now.

Councilman Collier: Okay as I read this, I'm sorry if I interrupted. As I read this thing, it was bid basically how the drawings were presented, with the different types of fences identified and that was given a base bid and the offer, which was the first thing. To add chain link fence in any one of those things, it would be an additional \$250 for a 10' section; to delete it from any of these things, you would delete it at \$250 per section and if you add it, add the decorative metal security fence, the price now goes from \$250 per 10' to \$625; so that's a net of \$375?

Councilman Coté: I just used \$400 in round numbers. Round numbers are easier.

Councilman Collier: Okay so that's a net difference of \$400 for every 10' section that we replace with the esthetically pleasing fence. That's what I'm going to call it from here on in. And that holds on each site, so the base bid, which is what we accepted, all the way across the board, and they were basically the low all the way across; is the \$36,900 and if we want to start messing around with the configuration of the fence, it's going to cost us a net of approximately \$400 for every 10' that we change.

Vice Mayor Booros: And what's the footage along the front and the side of the Maintenance Yard?

Councilman Collier: 175' across the frontage of the Maintenance Yard.

Vice Mayor Booros: And how about the side that you're going to see as you pull into town.

Councilman Collier: 30' is what it shows on the picture.

Vice Mayor Booros: How about the side you're going to see when you pull out of town?

Councilman Collier: It shows it to be 116', so do the math; just eliminate the chart.

Councilman Coté: It's roughly 300'.

Councilman Collier: 320'.

Councilman Coté: Okay.

Mayor Jones: Councilman Collier, I want to understand something and I'm doing

the math over here, the contract called for, if you removed one type, it had to be in 250' increments.

Councilman Collier: No. No. It's in 10' increments at \$250; so in other words, if you look at this Marion, here's how it's written, so if you delete 10' of chain link, you subtract \$250, so that would be removing 10'; if you replace it, you add this amount to each item across here.

Mayor Jones: Okay.

Vice Mayor Booros: So what's our net, \$400 and some dollars per 10' section?

Councilman Collier: For 10' sections, so you're looking at \$400 for every 10'; that's rounded up to the even dollar.

Vice Mayor Booros: And we have 220 feet around the Maintenance Yard?

Councilman Collier: 320'.

Councilman Coté: So 32 times 400.

Councilman Collier: \$12,800 in the Maintenance Yard and it's about the same amount, if not more, for up on top of the hill, because...

Mayor Jones: We're not considering the hill.

Councilwoman Patterson: I know someone had discussed this and I hope I'm not opening a can of worms, but to set back the fence, part of the Maintenance Yard, just a little and put up the Leland Cypress Trees to soften that road there...

Councilman Collier: That doesn't necessarily change the scope.

Mayor Jones: And the trees planted in front of a fence will now not allow you to see what's going on, if somebody's gotten in there.

Councilwoman Patterson: Okay. Well they're going to put that behind Cannery Village with the propane tanks; they're going to put the trees all around that.

Seth Thompson: That purpose is to not see that, right?

Councilwoman Patterson: But if somebody was back in there messing with the propane we wouldn't see them.

Mayor Jones: Well I don't what the advantage is of messing with the propane as it would be stealing metal from the Maintenance Yard?

Councilman Coté: You have to watch more carefully.

Vice Mayor Booros: Madame Mayor, one of the speakers tonight had a copy in his hands of the pictures that I gave at the last meeting; showing the arborvitae planted along the outside of the black chain link fence at the entrance to a neighborhood in Lewes and I was told that I insulted their intelligence by even providing such a thing.

Mayor Jones: I'm fenced out. I said I would and I will ask if anyone on this Council wishes to make a motion to contact the contractor and check on, as well as DEMA...

Seth Thompson: I think you have to do both.

Mayor Jones: Both would have to be done to... If anyone here would like to make a motion that a member of the elected group here, contact both DEMA and the present contractor for negotiation and reconsideration of the style of fencing at our Public Works building on Front Street.

Vice Mayor Booros: Can I ask a question before?

Mayor Jones: Hearing no motion, this issue is as it is. Vice Mayor Booros?

Vice Mayor Booros: Nope, never mind.

Mayor Jones: Thank you all for your time and effort in this; Mr. Wingo, thank you for the information you've provided. Please go forward as planned.

9. Executive Session:

- a. Strategy sessions involving legal advice or opinion from an attorney-at-law with respect to potential litigation
- b. Discussions of the content of documents, excluded from the definition of “public record” in 29 Del C. § 10002 of this title records, specifically pertaining to pending or potential litigation which are not records of any court

Councilman Collier: Move to go to Executive Session.

Councilman Coté: Second.

Mayor Jones: Whoa. Yes, I do have a different agenda than you do. Isn't that interesting? Okay, I'm looking for a motion to go into Executive Session.

Councilman Collier: Move to go to Executive Session.

Councilwoman Patterson: Second.

Mayor Jones: All those in favor say aye. Opposed. Motion is carried.

10. Discussion and possible vote on items discussed in Executive Session:

Councilman Collier: Motion to come out of Executive Session.

Councilman Coté: Second.

Mayor Jones: All those in favor say aye. Opposed. Motion is carried. Did you want to ask Councilman Coté anything, now that we're out of Executive Session?

Seth Thompson: Sure, it sounds like it will be the three Chestnut Properties people and you.

Councilman Coté: I think you could almost call it the Board of Directors of the Homeowner's Association; just meeting and we'll be discussing the streets.

Seth Thompson: We need to vote on the other item.

Mayor Jones: That would be 9.a. on your agendas.

Vice Mayor Booros: I make a motion that we not partner with Tidewater Utilities in applying for the grant for the Feasibility Study.

Councilman Coté: Second.

Mayor Jones: Is there any further discussion on this issue?

Councilman Collier: Just that somebody needs to inform Tidewater of our decision, because of the small window that they gave us.

Seth Thompson: I'll let them know.

Mayor Jones: All those in favor say aye. Opposed. Motion is carried.

11. Adjournment

Mayor Jones: Do I hear a motion to adjourn?

Councilman Collier: So moved.

Councilwoman Parker-Selby: Second.

Mayor Jones: All those in favor say aye. Opposed. Motion is carried. Meeting adjourned at 9:41

p.m.